Ong Bee Yam v Pengarah Hasil Dalam Negeri, Sarawak & Anor

HIGH COURT (KUCHING) — ORIGINATING SUMMONS NO 24-280 OF 2001-1
IAN CHIN J
8 FEBRUARY 2002

Revenue Law *— Estate duty — Liability — Claim for income tax from administratrix — Administratrix not allowed to leave country — Whether Income Tax Act 1967 s 104 can be used against an individual who does not owe the tax but acts as an administratrix — Whether administratrix can be made personally liable for the debt due from the estate of the deceased — Income Tax Act 1967 s 74(5)*

On 30 June 1989, the first defendant, Pengarah Hasil Dalam Negeri, Sarawak obtained judgment against 'Ong Bee Yam (the plaintiff), as Administratrix of the Estate of late Polycarp Soon @ Carp (the deceased), 305 Piasau Garden, Miri' for RM894,296.67 being the amount of income tax due from the deceased. On 26 April 1999, the first defendant acting under s 104(1) of the Income Tax Act 1967 ('the Act') issued a certificate against the plaintiff personally, barring her from leaving Malaysia on account of unpaid tax due from the deceased. The judgment debt was ordinarily time barred under item 98 of the Schedule to the Sarawak Limitation Ordinance ('the Ordinance') which provides for a limitation period of 12 years from the date of the judgment. However, it was in issue whether the Ordinance applied to the Government of Malaysia. The plaintiff sought a declaration to declare the certificate issued by the first defendant null and void and of no legal effect, and that the defendants were bound by the Ordinance and therefore barred from enforcing the judgment.

Held:

(1) Section 104 of the Act, when it uses the term 'payable by him' had in mind a person being personally liable for the payment of the tax and does not include an executor who is not personally liable for the tax. Since on the facts, the certificate was issued for a debt due from the estate of the deceased and not for a debt due from the plaintiff personally, it was unlawful to issue the certificate to the plaintiff who did not personally owe the debt. Section 104 of the Act is directed only at an individual who personally owes the tax. It cannot be used for the purpose of preventing an administratrix from leaving Malaysia in respect of a debt owed not by the administratrix personally but by the estate unless a personal liability has been attached. Any decision to the contrary concerning the meaning of the term may lead to gross injustice (see p 395A–E).

(2) Unless a provision is found in an Act or Ordinance to say that it applies to the government, the presumption is that the Act or

Ordinance does not apply unless it appears expressly or by necessary implication that the government should be bound. The Sarawak Limitation Ordinance, by virtue of the doctrine of Crown immunity and by s 127 of the Interpretation Acts 1948 and 1967, is not to be applied to the government unless there is an express provision or by necessary implication that it applies. In the circumstances, the defendants are not bound by the Sarawak Limitation Ordinance therefore the defendants are not barred from enforcing the judgment (see pp 397G–398A, D–E).

[Bahasa Malaysia summary

Pada 30 Jun 1989, defendan pertama, Pengarah Hasil Dalam Negeri, Sarawak telah mendapatkan penghakiman terhadap 'Ong Bee Yam (plaintif) sebagai Pentadbir Harta Pesaka Polycarp Soon @ Carp (si mati), 305 Piasau Garden, Miri' untuk RM894,296.67 sebagai bayaran bagi tunggakan cukai pendapatan daripada si mati. Pada 26 April 1999, defendan pertama di bawah s 104 (1) Akta Cukai Pendapatan 1967 ('Akta tersebut') mengeluarkan sijil terhadap plaintif, yang menghalang plaintif daripada meninggalkan Malaysia di atas sebab-sebab cukai yang tidak dibayar. Hutang penghakiman tersebut adalah biasanya dihadmasakan di bawah perkara 98 Jadual Ordinan Had Masa Sarawak ('Ordinan tersebut') yang membenarkan jangkamasa penghadan selama 12 tahun dari tarikh penghakiman. Walau bagaimanapun adalah merupakan satu isu samada Ordinan tersebut terpakai kepada Kerajaan Malaysia. Plaintif telah menuntut deklarasi untuk membatal dan tak sahkan sijil yang diikeluarkan oleh defendan pertama, dan juga bahawa defendan terikat pada Ordinan tersebut dan tidak boleh menguatkuasakan penghakiman tersebut.

Diputuskan:

(1) Seksyen 104 Akta tersebut apabila ia menggunakan terma 'harus dibayar olehnya' membawa maksud seseorang yang bertanggungjawab untuk membayar cukai dan ini tidak termasuk seorang wasi yang tidak bertanggungjawab secara peribadi untuk cukai tersebut. Oleh kerana secara nyatanya, sijil itu dikeluarkan untuk suatu tunggakan hutang daripada harta si mati dan bukannya daripada hutang plaintif sendiri, adalah tidak sah di sisi undang-undang untuk mengeluarkan sijil kepada plaintif yang tidak berhutang secara peribadi. Seksyen 104 Akta tersebut ditujukan kepada individu yang secara langsung berhutang cukai tersebut. Ia tidak boleh digunakan untuk menghalang pentadbir daripada meninggalkan Malaysia disebabkan hutang bukan oleh pentadbir secara peribadi tetapi oleh harta pesaka, kecuali telahpun terdapat satu liabiliti peribadi. Sebarang keputusan bertentangan akan mengakibatkan ketidakadilan yang ketara (lihat ms 395A–E).

A (2) Melainkan terdapat satu peruntukan dalam sesuatu Akta ataupun Ordinan yang menyatakan bahawa ia dapat diaplikasikan kepada Kerajaan, andaiannya adalah bahawa Akta atau Ordinan tersebut tidak dapat dikuatkuasakan kecuali ia dinyatakan atau membawa implikasi bahawa Kerajaan harus terikat. Ordinan Had Masa Sarawak, berasaskan doktrin imunisasi Raja dan di bawah s 127 B Akta-akta Interpretasi 1948 dan 1967, tidak harus diaplikasikan kepada kerajaan kecuali terdapat peruntukan ternyata atau perlu secara implikasi bahawa ia dapat digunakan. Di dalam situasi sebegini, defendan adalah tidak terikat kepada Ordinan Had Masa Sarawak, oleh yang demikian defendan tidak terhalang C daripada menguatkuasakan penghakiman tersebut (lihat ms 397G–398A, D–E).]

Notes

For cases on liability, estate duty, see 10 *Mallal's Digest* (4th Ed, 1999 D Reissue) paras 1851–1861.

Cases referred to

Baron Alderson in A-G v Donaldson (1842) 10 M & W 117 (refd)
Chong Woo Yit v Government of Malaysia [1989] 1 MLJ 473 (refd)
E *Government of Malaysia v Yee Kok Wei & Anor* Kuching High Court Suit No KG 268 of 1980, 5 April 1982 (refd)
Kerajaan Malaysia v Dato' Hj Ghani Gilong [1995] 2 MLJ 119 (refd)
Kerajaan Malaysia v Yong Siew Choon [1999] MSTC 3 754 (refd)
National Land Finance Co-operative Society Ltd v Director General of F *Inland Revenue Board* [1994] 1 MLJ 99 (refd)
Tai Choi Yu v Government of Malaysia & Ors [1994] 1 MLJ 677 (refd)
Thomas v Pritchard [1903] 1 KB 209 (refd)

Legislation referred to

G Civil Law Act 1956 s 3
Crown Proceedings Act 1947 [Eng] s 40(2)(f)
Government Proceedings Act s 45(2)
Income Tax Act 1967 ss 2, 74(5), 104(1), 128
Interpretation Acts 1948 and 1967 ss 4(2), 127
H Interpretation Ordinance s 3(15)
Limitation Act 1953 s 33
Sarawak Administration of Estates Ordinance s 18
Sarawak Limitation Ordinance items 6, 7, 98

Lim Heng Choo (*Lim & Lim*) for the plaintiff.
I *Norhisham bin Ahmad* (Legal Officer of the Inland Revenue Board) (*Hashim Hamzah* and *Mohd Taufik bin Mohd Yusoff* with him) (Senior Federal Counsels) for the defendants.

Ian Chin J:

Introduction

On 30 June 1989, the first defendant, Pengarah Hasil Dalam Negeri, Sarawak, obtained judgment against 'Ong Bee Yam, as administratrix of the estate of late Polycarp Soon @ Carp, 305, Piasau Garden, Miri' for RM894,296.67, being the amount of income tax due from Polycarp Soon. Almost a decade later, on 26 April 1999, the first defendant acting under s 104(1) of the Income Tax Act 1967 ('the Act') issued a certificate respecting the plaintiff, Ong Bee Yam, personally and barring her from leaving Malaysia on account of unpaid tax due from the deceased. By this time, the judgment debt is time barred under item 98 of the Sch to the Sarawak Limitation Ordinance ('the Ordinance') which provides for a limitation period of 12 years from the date of the judgment, provided the Ordinance applies to the Government of Malaysia, and whether it applies is an issue. As for the certificate, this is what it says:

SIJIL DI BAWAH SEKSYEN 104(1) AKTA CUKAI PENDAPATAN, 1967

Nama	:	Ong Bee Yam
Jantina	:	Perempuan
No Kad Pengenalan	:	K242570 (451227-13-5018)
No Pasport	:	Tidak diketahui
Tarikh Lahir	:	27.12.1945
Tempat Lahir	:	Sarawak
Warganegara	:	Malaysia
Alamat	:	305, Piasau Garden, 98000 Miri

Pada menjalankan kuasa-kuasa yang diberi oleh s 104(1) Akta Cukai Pendapatan 1967 adalah dengan ini disahkan bahawa cukai pendapatan berjumlah RM1,323,755.06 (Ringgit ...) perlu dibayar oleh penama tersebut di atas dan perlu dihalang daripada meninggalkan Malaysia sehingga beliau menjelaskan cukai dengan sepenuhnya atau mengemukakan cagaran yang memuaskan bagi jumlah yang sama.
[signed, etc.]
Pengarah Hasil Dalam Negeri,
Sarawak.

The first defendant, the Director of Inland Revenue, and the second defendant, the Government of Malaysia, through their respective learned counsel, Norhisham bin Ahmad and Mohd Taufik bin Mohd Yusoff, contended that s 104 the Act permits them to issue the certificate against the plaintiff to bar her from leaving Malaysia until the tax, which is the

amount owing by the estate of Polycarp Soon, is paid. The plaintiff personally does not owe any tax. Section 104 reads:

> 104 — Recovery from persons leaving Malaysia
>
> (1) The Director General, where he is of the opinion that any person is about or likely to leave Malaysia without paying:
>
> (a) all tax payable by him (whether or not due or due and payable);
> (b) all sums payable by him under s 103(4), (5) or (5A); and
> (c) all debts payable by him under s 107A(2) or 109(2) or 109B(2).
>
> may issue to any ... Director of Immigration a certificate containing particulars of the tax, sums and debts so payable with a request for that person to be prevented from leaving Malaysia unless and until he pays all the tax, sums and debts so payable or furnishes security to the satisfaction of the Director General for their payment.
>
> ...
>
> (2)... (3)... (4)... (5)... (6)...
>
> ...

Meaning of 'payable by him'

One issue turns upon the meaning of the term 'payable by him'. Does that term include an administratrix whose estate, and not her personally, owed tax? This is a question of construction of a statute and the various provisions of the Act fall to be considered. The representative capacity of an individual has been defined by s 2 of the Act to include an administrator and, by s 4(2) of the Interpretation Acts 1948 and 1967, to include the female gender which is an administratrix. Administratrixes are made liable under s 74 of the Act to be assessed and charged for tax due on the chargeable income of a deceased individual, but by sub-s (4) of s 74, the tax payable is only 'a debt due from and payable out of the estate of that deceased individual'. This is how s 74 reads:

> Executors
>
> (1) Where an individual dies in the basis year for a year of assessment, his executors shall be assessable and chargeable to tax for that year of assessment, for the following year of assessment and whenever necessary, for any previous year of assessment in respect of the chargeable income of that individual for any such year of assessment; and, where they are so assessable and chargeable, they shall be assessable and chargeable to tax in like manner and to the like amount as the individual would be assessed and charged to tax if he had not died.
>
> (2) For the purposes of sub-s (1)
>
> (a) the reference therein to the chargeable income of any individual for any year of assessment shall be taken to be such chargeable income. for that year as he would have had if he had not died in respect of any income of his arising before his death and in respect of any income received by his executors which if he had not died and if it had been received by him (at the time it was received by his executors) would have been taken into account in arriving at that last-mentioned chargeable income; and

(b) all rights and duties which would have attached to him with respect to that last-mentioned chargeable income as he would have so had shall pass to his executors

(3) Any assessment or additional assessment to be made in consequence of the foregoing subsections shall be made not later than the end of the third year of assessment following the year of assessment in the basis year for which:

(a) the individual died;
(b) the estate duty affidavit (if any) was filed in Malaysia with respect to any part of the estate of that individual; or
(c) where such an estate duty affidavit has been filed, the last of any corrective affidavits relating to that estate duty affidavit was filed.

being the basis year in which the last of those events took place.

(4) The amount of any tax payable by the executors of a deceased individual by virtue of this section (together with any penalty which may be incurred under s 103 (4)) shall be a debt due from and payable out of the estate of that deceased individual.

(5) The executors of a deceased individual shall not distribute any of the assets of his estate unless they have made provision (in so far as they are able to do so out of those assets) for the payment in full of any tax which they know or might reasonably expect to be payable by them under this section.

(6) Any executors who fail to comply with sub-s (5) shall be jointly and severally liable to pay a penalty equal to the amount of the tax to which the failure relates.

(7) Section 125 (2) shall apply to a penalty imposed by sub-s (6) of this section as it applies to a penalty imposed by s 112 (3) or 113(2).

So, an executor is only 'assessable and chargeable to tax' but what is owing is not due from him or payable by him personally but out of the estate of the deceased. The Act has made that distinction where it provides under sub-s (4) that such tax is only 'a debt due from and payable out of the estate of that deceased individual'. Thus, the executor does not incur any personal liability for the payment of the tax due from a deceased individual except, as provided under sub-s (6), where he distributed the assets of the estate without making provision for the payment in full of the tax owing by the estate. A law of a more general application in Sarawak concerning an executor or administratrix is the Sarawak Administration of Estates Ordinance where s 18 provides for such a representative to be personally liable to creditors of the estate if he has distributed the estate to the heirs or beneficiaries without first having discharged all the legally recoverable debts contracted by the deceased. This brings me to the term 'payable by him' in s 104. It must be borne in mind that under sub-s (4) the tax payable is only 'a debt due from and payable out the estate of the deceased individual'. The employment of this term shows clearly that the executor shall assume no personal liability for the tax save in the circumstances I have mentioned and which are of no relevance for the consideration of the meaning of the term 'payable by him'. I am of the view that, given the fact that an executor is not personally liable for the tax due from a deceased individual, and that such

A is deemed a debt owing by the estate and to be paid out of the estate, the tax due cannot be said to be payable by the plaintiff. The debt is payable by the deceased individual. Therefore, s 104, when it uses the term 'payable by him' had in mind a person being personally liable for the payment of the tax and does not include an executor who is not personally liable for the tax. Since the certificate was issued for a debt due from the estate of Polycarp B Soon and not for a debt due from the plaintiff personally, it is unlawful to issue the certificate to the plaintiff who does not personally owe the debt. Section 104, in my view, is directed only at an individual who personally owes the tax. It cannot be used for the purpose of preventing an administratrix from leaving Malaysia in respect of a debt owed not by the C administratrix personally but by the estate, unless a personal liability has been attached by virtue of the circumstances earlier referred to, but none of them pertain in this case. The cases of *Kerajaan Malaysia v Yong Siew Choon* [1999] MSTC 3, 754, *Chong Woo Yit v Government of Malaysia* [1989] 1 MLJ 473, *National Land Finance Co-operative Society Ltd v Director General of Inland Revenue* [1994] 1 MLJ 99 and *Kerajaan Malaysia v Dato' D Hj Ghani Gilong* [1995] 2 MLJ 119 are not relevant as they are not concerned with the interpretation of the term of s 104. The case of *Tai Choi Yu v Government of Malaysia & Ors* [1994] 1 MLJ 677, though it touches on s 104, was not concerned with the term nor with an executor and is therefore also of no assistance.

E Any decision to the contrary concerning the meaning of the term may lead to gross injustice. Say, the deceased individual died intestate leaving children and tax due but without sufficient assets to meet the tax debt. None of the children applied for letters of administration but because rent in respect of a building was payable to the deceased, the children received cash payment of the same so as to pay the utility bills and other dues payable F by the deceased so as to avoid a breach of the term of the tenancy. The children have to go for overseas study and have funds from relative to do that. But the deceased owed millions in tax. The contrary interpretation would in such a situation allow the first defendant to issue a certificate against the children from leaving because they could be regarded as being persons 'administering or managing the estate of a deceased person' within G the meaning of s 74(1) by virtue of their receiving the rental and therefore would be chargeable and assessable to tax though they do not personally owe the tax. Such a conclusion should be avoided. What, then, on the other hand, of the case of a personal representative who appropriates money of the estate to himself instead of paying the tax? That does not turn the tax owing by the estate into one owing by the personal representative personally H except for the circumstances (which is not exhaustive) that I have mentioned.

It was argued by the first defendant that the plaintiff should be barred by laches. It will be recalled that the certificate was issued on 26 April 1999. The plaintiff had made the present application on 13 September 2001, I about two years and five months after the issue of the certificate. It must be appreciated that though the certificate was issued in 1999 it is still current. Any application made during the currency of the certificate cannot be

labelled as being made late, let alone the kind of delay to support an allegation of laches.

Whether the Sarawak Limitation Ordinance applied to the Government of Sarawak

The next issue is whether the first defendant is barred from enforcing the judgment debt against the estate. It is, as mentioned earlier, barred unless it can be argued that the Ordinance does not apply to the Government of Sarawak. This issue has to be resolved because the plaintiff is asking for a declaration that the debt is statute barred and no longer payable, obviously for the purpose of distributing the assets of the deceased (which include various landed properties) without paying the tax owed by the deceased. The Ordinance applies to Sarawak and not the Limitation Act 1953 which applies only to West Malaysia. The Limitation Act 1953 is clear on this point and this is stated in s 33:

> (1) Save as in this Act otherwise provided and without prejudice to the provisions of s 3 of this Act, this Act shall apply to proceedings by or against the Government in like manner as it applies to proceedings between subjects and for the purposes of this Act a proceeding by petition of right shall be deemed to be commenced on the date on which the petition is presented:
>
> Provided that this Act shall not apply to any proceedings by the government for the recovery of any tax, duty or interest thereon or any forfeiture proceeding under any written law in force in Malays relating to customs duties or excise or to any proceedings in respect the forfeiture of a ship.
>
> (2) For the purposes of this section proceedings by or against any government department or any officer of any government as such or any person acting on behalf of the government shall be deemed to be proceedings by or against the government.
>
> (3) In this section the expression 'the Government' shall be deemed to include the Government of any State.

Thus, by s 33, the period of limitation cannot be raised against the Government of Malaysia for the recovery of income tax. This Act was revised in 1981 and it came into force in 1981 with a provision that it applied to West Malaysia only. The matter of limitation is within the exclusive legislative jurisdiction of the Federal Government (see the Federal Constitution, 9th Sch, Legislative Lists, List 1 — Federal List, para 4(e)). Therefore, it was within the power of Parliament to make the Act applicable to Sabah and Sarawak as well, but it did not. What is the legal approach to determining whether an Ordinance applies to the Government of Malaysia or not? First, the English doctrine of Crown immunity has to be considered.

Doctrine of Crown immunity

Under the English doctrine, since an Act is made by the Queen in Parliament for the regulation of subjects, it follows that unless the contrary intention appears, the Act does not bind the Crown itself, though it may

take advantage of it (see *Francis Bennion on Statutory Interpretation*, (2nd Ed), p 117–118). Thus, 'it is inferred prima facie that the law made by the Crown ... is made for subjects, and not for the Crown' per *Baron Alderson in A-G v Donaldson* (1842) 10 M & W 117, at p 123. This doctrine is recognized by the English Crown Proceedings Act 1947, s 40(2)(f) where it says:

> (2) Except as therein otherwise expressly provided, nothing in this Act shall
>
> ...
>
> (f) affect any rules of evidence or any presumption relating to the extent to which the crown is bound by any Act of parliament; or
>
> ...

This doctrine is not limited to the monarch personally but extends to all bodies and persons acting as servants or agents of the Crown, particularly to all elements of the Executive government including government departments (see Francis Bennion, p 119). That is the position in England. Is the doctrine applicable to Malaysia?

It was applicable by virtue of s 3 of the Civil Law Act 1956 and its application has in fact been recognized by the various Acts and Sarawak Ordinance. Firstly there is s 45(2)(f) of the Government Proceedings Act which says that: 'Except as therein otherwise expressly provided, nothing in this Act shall ... (f) affect any rules of evidence or any presumption relating to the extent to which the government is bound by any written law.' The presumption there, in my view, refers to the presumption under the doctrine of Crown Immunity that prima facie the Crown is not to be bound by any Act. The recognition is repeated in s 127 of Interpretation Acts 1948 and 1967 which says that: 'No Act of Parliament, Ordinance or Enactment shall in any manner whatsoever affect the rights of the Yang di-Pertuan Agong or of the government unless it is therein expressly provided, or unless it appears by necessary implication, that the Yang di-Pertuan Agong or the government, as the case may be, is bound thereby'. This Act lends added strength to the prima facie presumption of the doctrine that the Act is not to apply to the government. Sarawak has its own Interpretation Ordinance and s 3(15) provides that: 'No written law shall be binding on the Government of Sarawak unless it appears expressly or by necessary implication that the Government of Sarawak shall be bound thereby'.

Therefore, unless you find a provision in the Act or Ordinance to say that it applies to the government, the presumption is that the Act or Ordinance does not apply unless it appears expressly or by necessary implication that the government should be bound. Section 33 of the Limitation Act 1953, contains an express provision for the application of that Act to the government, but even then it contains a reservation that it should not apply to proceedings where the government is seeking to recover, inter alia, taxes. There is also s 128 which provides that PART II of the Act shall be binding on the Yang di-Pertuan Agong and on the government. As for the Sarawak Limitation Ordinance, by virtue of the doctrine of Crown Immunity and by s 127 of the Interpretation Acts 1948

and 1967, it is not to be applied to the government unless there is an express provision or by necessary implication that it applies. The express contrary intention usually takes the following form, quoting Francis Bennion, at p 121:

> *Express contrary intention*
>
> Where it is intended that the Crown shall be subject to the provisions of an Act, the usual practice is to insert the provision near the end of the Act saying 'this Act binds the Crown'. A corresponding procedure is followed where it is desired that a particular provision, rather than the whole Act, shall be binding on the Crown (eg 'this section binds the Crown'). Lord Keith said it is desirable that Acts should always state explicitly whether or not the Crown is intended to be bound by any, and if so which, of their provisions.

There is none of that in the Ordinance. This leaves the question of whether it was necessary to imply that it should apply to the government.

Necessary implication

It has not been urged upon that court as to why an implication that it should apply to the government is necessary. It is far from being an obscure maxim of law but part of the common law that is clear and has been given, as mentioned above, statutory recognition. The court was then referred to the unreported case of *Government of Malaysia v Yee Kok Wei & Anor* (Kuching High Court Suit No KG 268 of 1980, 5 April 1982) and this is what learned counsel for the plaintiff said in relation to this case:

> In *Government of Malaysia v Yee Kok Wei & Anor* under Suit No KG268 of 1980, the High Court held that item 19 was not intended to include the tort of negligence in the driving of motor vehicles and the limitation falls under item 97 giving the plaintiff six years from the accident to institute the action. Items 19 and 97 are items listed in the Sch to the Limitation Ordinance (Cap 49). It is clear that the High Court at Kuching had examined the provisions of the Limitation Ordinance (Cap 49) relating to the limitation period for negligent driving. Datuk Denis Ong (the then Assistant State Attorney General and now a Court of Appeal judge) was for the Government of Malaysia, the plaintiff and the learned Judge, Datuk Tan Chiaw Thong was the former State Attorney General of Sarawak before elevation to the Bench. Implicit in that decision of Datuk Tan Chiaw Thong was the application of the provisions of the Limitation Ordinance (Cap 49) to the Government of Malaysia.

The short answer to that proposition is that the question of whether a particular Act or Ordinance binds the government was never an issue in that case and therefore not considered at all. As the point was not taken up, the most that can be said was that it was an implied concession. It is common sense that a concession by a party to an action as to what may be the law is never a statement by the court as to what the law really is. I am of the humble view that if the law has been urged and gone into, the same process of interpreting the Ordinance that I have undertaken would have to be undertaken by that case if that issue had been raised. As it was not the issue there, that case is of no relevance.

A The court was then referred to the fact that the Ordinance was declared a Federal Law in 1965 and that earlier in 1963, a definition of the Government of the Federation and of any state was included. But learned counsel did not go further to argue that such a step gave rise to the implication that the government is to be bound. It must be borne in mind that for the plaintiff to succeed in the argument that the government is B bound by the Limitation Ordinance, it must be shown either that an express term in the Ordinance states that it binds the government or that it is so by necessary implication. Learned counsel did not proceed on that line. In any event, such an amendment can hardly give rise to the necessary implication that the Ordinance is to apply to the government. The definition of C 'government' was included because that term was mentioned in items 6 and 7 of the Sch to provide for a limitation of one year for actions against the government in respect of certain actions. The amendment seeks merely to define what is meant by the use of the term 'government'. It can hardly give rise to the implication. Even in a case where certain provisions are stated not to bind the Crown, the rest cannot be said to be intended to do so. Again, D I refer to Francis Bennion, at p 121, where it is said:

> It has been held not proper to infer, by applying the expression unius principle, that because certain provisions of an Act are stated not to bind the crown, therefore the remainder is intended to do so. The House of Lords held in 1990 that the conclusion that the provisions of a particular Act do not bind E the Crown is not controverted by the fact that a section of the Act states expressly that that section shall not bind the Crown, since such saving provisions are commonly inserted *ex abundanti cautela* and do not support the inference that the Crown was, in other respects, intended to be bound by the Act.

F The case of *Thomas v Pritchard* [1903] 1 KB 209 refers to cases which are good illustrations of how to go about discovering whether the circumstances give rise to the necessary implication that an Act is to bind the Crown. This is what was said in that case at pp 213–214:

> ... Two cases which were cited in argument shew clearly, I think, that that is (the principle. In the First, *Reg v Beadle* 7E & B 492, the court had to consider G the provisions of 12 & 13 Vict c 45 with respect to payment of costs, and they came to the conclusion that the Act, being a perfectly general Act relating to procedure and applicable under ordinary circumstances to cases between subject and subject, there was no sufficient implication that the Crown was intended to be bound by those provisions. They therefore held that an order that the Crown should pay costs in that case could not be supported. The H second case, *Moor v Smith* IE & E 597, was a decision upon 20 & 21 Vict c 43, which may equally, I think, be said prima facie to be a general Act relating to procedure. The Court of Queen's Bench came to the conclusion that as s 4 of the (Summary Jurisdiction) Act contained a reference to the right of the Attorney General to order a case to be stated, not merely in the interests of the Crown but in the interests of the discharge of his important duties as Attorney General, it was sufficient to show that the Crown was intended to be subject I to the provisions of s 6, which gave power to award costs to the successful party on an information. In his judgment Lord Campbell, who had been a party to the decision in *Reg v Beadle* and was a great authority on any matter

relating to Crown rights, said: 'It is a maxim that the Crown is not bound by an Act of Parliament without express words. But I think that there is express language in this statute to show that it includes all cases of appeal, and therefore those in which the Crown is interested'. That was obviously only an implication. It was not that the Crown was named, but that all cases of appeals including those of the Crown, were included. Crompton J, also a high authority on such a matter, said: 'I am inclined to think that even without s 4, the Crown would be within the provisions of s 6, which appears to me to apply to all cases of appeal under the statute. The ratio decidendi in *Reg v Beadle* does not apply here. Here is an Act giving, by s 2, a general right of appeal from the determination by justices of 'any information or complaint'. Section 4, giving the Attorney General the right to require a case to be stated, clearly contemplates Crown proceedings as within the Act. Then, s 6, respecting costs, is clearly applicable to all cases within s 4, and therefore includes Crown cases.

There are no provisions in the Ordinance that can be construed or that can be called in aid to imply that the government is to be bound by the Ordinance.

Conclusion

For the reasons I have given, I will grant the declaration that the letter dated 26 April 1999 and issued by the Director of Inland Revenue, Sarawak, to Ong Bee Yam (f) is null and void and of no legal effect. The rest of the declaration cannot be granted as the defendants are not bound by the Ordinance, and therefore the defendants are not barred from enforcing the judgment. As for the declaration that Ong Bee Yam (f) is not to be personally liable for the debt due from the estate of the deceased, that declaration is made, but subject to the reservation that the said Ong Bee Yam may still be personally liable if she fails to comply with s 74(5) of the Income Tax Act by distributing the assets of the estate without making provision when she is able to do so out of the assets for the payment in full of the tax. Costs to the plaintiff.

Order accordingly.

Reported by Peter Ling